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MEASURING THE DOMINANT PARADIGMA IN UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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Article Info Abstract

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This study discusses the paradigm used by the United Nations in governing relations among countries on searelated issues based on the United Nations Convention on the Law of the Sea. Laws/regulations on sea-related issues have undergone amendments since their inception in 1958 to adjust to the current condition, factors that trigger searelated disputes, as well as global political and economic dynamics. Reforms in the regulatory mechanism on searelated issues were marked by the enactment of the United Nations Convention on the Law of the Sea in 1982. This paper presents an analysis and evaluation of the paradigms used by the United Nations in establishing the mechanisms of sea-related issues through the United Nations Convention on the Law of the Sea. Content analysis was employed to analyze the law based on three indicators: actors, authorities, and governance representing the three paradigms; realism (competition), liberalism (collaboration), and constructivism (historical and social construction). The analysis showed that the United Nations Convention on the Law of the Sea concerning the regulation mechanism on sea-related issues between countries is strongly influenced by the realism paradigm.

A. Introduction

The term territorial waters have been used in informal context in referring to any area of water over which a state has jurisdiction, including internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, and potentially the continental shelf. The term is used as a synonym for the territorial sea in a narrower context.¹ According to the United Nations Convention on the Law of the Sea (UNCLOS) ², the territorial sea is the border of coastal waters which extends at most 12 nautical miles (22 km; 14 mi) from a coastal state's

¹ https://www.britannica.com/topic/territorial-waters, diakses pada 3 April 2022.

² Law Number 2 of 1982 United Nations Convention on the Law of the Sea

baseline (usually the mean low-water mark). The territorial sea is considered the sovereign territory of the state, with sovereignty extending over the airspace above and the seabed below. However, foreign vessels, both military and civilian, are granted the right to innocent passage through it, or transit passage through straits. Adjustment of these boundaries is referred to as the maritime delimination in international law.

Maritime boundaries are regulated in the 1982 United Nations Convention on Law of The Sea³ that applies to all countries. ⁴ The law of the sea is a body of customs, treaties, and international agreements by which governments maintain order, productivity, and peaceful relations on the sea.⁵ International relations offer a unique lens through which to view maritime issues. The framework and approach adopted can significantly shape our understanding and attitudes toward these issues. For instance, the realism approach in international relations considers maritime issues to be of crucial importance. Realism, also known as political realism, is a view of international politics that stresses its competitive and conflictual side.⁶ Realism views the state as the primary and most influential actor (state-centric).⁷ It is usually contrasted with idealism or liberalism, which tends to emphasize cooperation. Realists consider the main actors in the international arena are the states, which are concerned with their own security, act in pursuit of their own national interests, and struggle for power.⁸

As the opposite of realism, liberalism, or labelled as idealist, views that international relations actors are not only the state but also other actors such as multinational companies (MNCs), non-governmental organizations (NGOs), etc. It implies that state's interest reflects individual's interest. Liberalism also regards the international structure a collaboration. Liberalists naturally turn to law as a limitation of power. Meanwhile, the constructivist approach states that marine issues are social construction. Constructivism always associates with security issues, ideas and norms. This theory roots in structuration and symbolic interactionism, where international institutions are also important actors besides states.

Those approaches are often used by countries and institutions, or organizations in viewing an issue and making a policy. Therefore, the author intends to conduct a more in-depth analysis of the perspectives and approaches used by the United Nations in viewing marine issues through the United Nations Convention on the Law of the Sea. There is already an article that discusses marine issues in the international scope through content analysis from UNCLOS titled "The Concept of The Archipelagic Province And Archipelagic State in the Perspective of National and International Law" compiled by Muhammad Risnain.¹³

⁴ Orakhelashvili, Akehurst's Modern Introduction to International Law (London: Routledge, 2018). (8th ed.). https://doi.org/10.4324/9780429439391

 $^{^3}$ *Ibid*.

⁵ https://oceanservice.noaa.gov/facts/lawofsea.html, diakses pada 10 Maret 2022.

 $^{^6}$ William Wohlforth, "Gilpinian Realism And International Relations." International Relations 25, no. 4, (2011): 499–511, 25, https://doi.org/10.1177/0047117811411742

⁷ Stefano Guzzini, "The Enduring Dilemmas Of Realism In International Relations." *European Journal of International Relations* 10, no. 4, (2004): 533–568, 10, https://doi.org/10.1177/1354066104047848

⁸ Hans. J. Morgenthau, Politic Among Nations. (New York: McGraw-Hill, 1985), 165.

⁹ Andrew Moravcsik, Liberalism and International Relations Theory. (Cambridge: Harvard University Press), 3-

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¹² Muhammad Rosyidin, Teori Hubungan Internasional: Dari Perspektif Klasik Sampai Non-Barat. (Depok: Rajawali Pers, 2020)

¹³ Muhammad Risnain, "The Concept Of The Archipelagic Province And Archipelagic State In The Perspective Of National And International Law", *Lampung Journal of International Law* 3, no. 2, (2021): 73-84, 3, doi: 10.25041/lajil.v3i2.2367

The analysis conducted in both current and the previous writings with previous writings was conducted based on UNCLOS. This article offers a novelty as it compares previous works by undertaking a content analysis focusing on three key indicators: authority, governance, and actors. Subsequently, it interprets the outcomes of the UNCLOS (United Nations Convention on the Law of the Sea) content analysis through the lens of three major international relations theories: realism, liberalism, and constructivism. The objective of this paper is to identify the paradigm adopted by the United Nations in addressing and formulating policies concerning maritime issues.

This paper aims to determine the paradigms used by the United Nations in viewing and making policies related to marine issues (UNCLOS). Three hypotheses were proposed in analyzing the data. First, the regulation of the maritime problems regulated by UNCLOS uses a realism approach. Second, the regulation of maritime issues regulated by UNCLOS uses a liberalism approach. Third, the regulation of maritime issues regulated by UNCLOS uses a constructivist approach.

B. Discussion

1. Analysis Towards United Nations Convention on the Law of the Sea

The United Nations holds pivotal roles in realizing justice for all nations in terms of maritime affairs and avoiding the impacts of conflicts between countries. In the past, 'freedom of the seas' concept, ¹⁴ was implemented in the 17th century. Starting in the early of the 20th century, several nations expect to extend national claims: to include mineral resources, to protect fish stocks, and to provide the means to enforce pollution controls. (The League of Nations called a 1930 conference at The Hague, but no agreements). On the other hand, the Law of the Sea facilitates negotiations aimed at enhancing state sovereignty and the exploitation of seabed resources.¹⁵. By 1967, only 25 nations still used the old three nautical mile limit even though the law is no longer regarded relevant. In addition, the provisions in the United Nations Convention on the Law of the Sea concerning the law and regulations of the sea are in accordance with constitutional life, legal developments, and the needs of the community so that the law does not need to be changed. Thus, on December 10, 1982, the United Nations, after the third maritime conference, ratified the United Nations Convention on the Law of the Sea concerning a legal framework for all marine and maritime activities. 16 Then the law was ratified with 60 ratifications as the basis for the United Nations in carrying out its roles and functions to regulate laws related to maritime affairs. Maintaining international order by agreeing to regulatory authority is a strategy to avoid dispute in specific areas¹⁷. Most of the disputes are legal issues of international concern such as ocean navigation, strategic purposes and trade¹⁸. It is essential to manage the distribution of state's interest in achieving ecological, economic and the outcome through social interaction.¹⁹

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¹⁴ Mirja Amshav, "The Freedom Of The Seas: Untapping The Archaeological Potential Of Marine Debris," *Journal of Maritime Archaeology 9*, no.1, (2014): 8, 9, doi:10.1007/s11457-014-9129-5

¹⁵ Pierre Thévenin, "A Liberal Maritime Power As Any Other? The Soviet Union During The Negotiations Of The Law Of The Sea Convention," *Ocean Development and International Law* 52, no. 2, (2021): 193–223, 52, https://doi.org/10.1080/00908320.2021.1910158

¹⁶ Spalding, Ana K, de Ycaza, and Ricardo, "Navigating Shifting Regimes Of Ocean Governance," *Environment and Society: Advances in Research 11*, no. 1, (2020): 5–26, 11, doi:10.3167/ares.2020.110102

¹⁷ Eric A. Posner and Alan O. Sykes, "Economic Foundations Of The Law Of The Sea," *American Journal of International Law* 104, no. 4, (2010): 569–96, 104, https://doi.org/10.5305/amerjintelaw.104.4.0569.

¹⁸ Sunil Kumar Agarwal, "Prospects Of A Paradigm Shift In The American Policy Towards Un Convention On The Law Of The Sea: Potential Implications," *SSRN Electronic Journal*, (2012), https://doi.org/10.2139/ssrn.1866113.

¹⁹ Jacek Zaucha and Kira Gee, Maritime Spatial Planning: Past, Present, Future, Maritime Spatial Planning: Past, Present, Future. (London: Palgrave Macmillan, 2019). https://doi.org/10.1007/978-3-319-98696-8.

According to the United Nations Convention on the Law of the Sea (UNCLOS), the sovereignty of a coastal state extends beyond its land territory and internal waters, and in the case of an archipelagic state, its archipelagic waters, to an adjacent belt of sea known as the territorial sea. Additionally, the contiguous zone is an area beyond the territorial sea where a coastal state can exercise certain controls. The United Nations facilitates agreements on maritime issues among countries. However, in practice, not all countries are signatories to UNCLOS, with a total of 157 countries having ratified the agreement.

The author used three indicators to analyze the perspectives and approach used by the United Nations in viewing marine issues through UNCLOS. Maritime security is prone to be attacked by piracy and any armed robbery, therefore this should be in the discourse under UNCLOS²⁰, conflict of interest²¹, conquest and exploitation²². The peace would be a threat for peace and cause further conflict²³. The principles of UNCLOS are crucial to the interests of the international community, aiming to uphold societal objectives among member states.²⁴ The framework consists of three key indicators: actors, authorities, and governance. The author categorizes the employment of words, sentences, and symbols pertinent to these indicators into three theoretical approaches: realism, liberalism, and constructivism. The following section presents the findings from the analysis conducted by the author.

1. Authority Analysis

Table 1. Authority Indicators of the United Nations Convention on the Law of the Sea

Approach	No	Authority	Word Count
	1	Maintenance	31
	2	Government	79
	3	Assignment/Assign	5
	4	Supervision	7
	5	Mastery	9
	6	Measuring	160
Realism	7	Warning	6
	8	Bordering	28
	9	Enforcement	50
	10	Exploitation	98
	11	Audit	10
	12	Arrangement	55
	13	Evaluating	6
	14	Operation	112
	15	Controlling	101

 $^{^{20}}$ Edwin Egede, The Law of the Seabed. (Leiden: Brill Publishers, 2019), 249–65. https://doi.org/10.1163/9789004391567.

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²¹ Lisa B. Uffman-Kirsch, Benjamin J. Richardson, and Elizabeth Ingrid van Putten, "A New Paradigm For Social License As A Path To Marine Sustainability," *Frontiers in Marine Science* 7, no. 2, (2020): 1–6, 7, https://doi.org/10.3389/fmars.2020.571373.

²² Jeffrey S. Lantis, "Agentic Constructivism And The Proliferation Security Initiative: Modeling Norm Change ", *Cooperation and Conflict* 51, no. 3, (2016): 384–400, 51, https://doi.org/10.1177/0010836716640831.

²³ Robert Kelly Stewart, "Strategic Puzzle In The South China Sea: Perception, Power, And Money." Chinese Plans For Hegemony?", *International Political Economy Theses*. (2018): 21. https://soundideas.pugetsound.edu/ipe_theses/21.

²⁴ Yoshifumi Tanaka, "Changing Paradigms In The Law Of The Sea And The Marine Arctic ", *International Journal of Marine and Coastal Law* 35, no. 3, (2020): 439-67, 35, https://doi.org/10.1163/15718085-BJA10012.

		TOTAL	757
	PERCENTAGE		60%
	16	Services	42
	17	Protection	62
	18	Planning	10
	19	Directing	1
	20	Investigation	18
	21	Management	30
	22	Compliance	70
	23	Recovery	31
	24	Coordinate	30
	25	Rescue	2
Constructivism	26	Dealing	18
	27	Prevention	88
	28	Training	20
	29	Repair	6
	30	Allocation	10
	31	Organizing	1
	32	Avoidance	2
	33	Cooperation	47
	34	Distribution	11
		TOTAL	499
		PERCENTAGE	40%
	TOTAL AUTHORITY		1256

Based on the results of the analysis presented in Table 1, the authorities in UNCLOS on maritime issues between countries place more emphasis on the realism approach with a percentage of 60%. This realism authority is evidenced the term; government, measuring, exploitation, operation, controlling, and other authorities. Meanwhile, the use of words that represent the constructivist approach only constitutes to 40% that includes; compliance, cooperation, prevention, protection, and other authorities. UNCLOS provides guarantees to the United Nations for governing, measuring, exploitation, operation, controlling, and other actions. Actions based on this realist approach aim to regulate maritime issues between countries in the international arena.

2. Governance Analysis

Table 2. Governance Indicators in the United Nations Convention on the Law of the Sea

Approach	No	Governance	Number of Words
	1	Plan	26
	2	Policy	20
	3	Law	204
	4	Constitution	8
Realism	5	Process	46
	6	Threat	18

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	7	Criminal	3
	8	Decision	75
	9	System	42
	10	Procedure	228
		TOTAL	670
		PERCENTAGE	45%
	11	Information	64
	12	Document	10
Liberalism	13	Program	39
Liberarism	14	Detail	5
	15	Conservation	37
		TOTAL	155
		PERCENTAGE	10.5%
	16	Aid	31
	17	Facilities	55
	18	Infrastructure	5
	19	Principle	41
	20	Foundation	1
	21	Accord	317
Constructivism	22	Education	6
	23	Structure	36
	24	Guideline	8
	25	Consideration	30
	26	Warrant	3
	27	Guarantee	7
	28	Deliberation	2
	29	Agreement	122
	TOTAL		664
		PERCENTAGE	44.5%
TOTAL GOVERNANCE			1489

Table 2 show higher frequency of the use of the realist approach compared to the liberal and constructivist approaches, even though the number is close to the constructivism approach Governance that emphasizes a realist approach is shown by the words; law, procedure, decision, process, and other governance. Governance in UNCLOS consists of several words; governing, measuring, exploitation, operation, controlling, and other actions. The United Nations realizes its function as an enforcer of the law of the sea through the establishment of UNCLOS regulations.

3. Actor Analysis

Table 3. Actor Indicators in the United Nations Convention on the Law of the Sea

Approach		Actor		
			Words	
	1	President	39	
	2	Secretary	78	
	3	Officials	49	
	4	Parties	501	
5 1.	5	Army	2	
Realism	6	Councils	125	
	7	Courts	38	
	8	Advisory	10	
	9	Representatives	17	
	10	Tribunal	212	
	10	TOTAL	1071	
		PERCENTAGE		
	11	Institutions	20	
	12	People	8	
	13	Community	1	
Liberalism	14	Public	33	
Liberansin	15	Residents	2	
	16	Fisher	14	
	17	Groups	14	
	18	Members	252	
	19	Private	4	
		TOTAL		
		PERCENTAGE	16%	
	20	Non-governmental	3	
	21	Nations	107	
Constructivism	22	Corporations	1	
	23	International	370	
	24	Organizations	201	
		TOTAL	682	
PERCENTAGE TOTAL ACTORS			34%	
	2101			

Table 3 explains that UNCLOS places more emphasis on the role of state actors compared to non-state actors. From the analysis results, realist actors get a higher percentage of results than liberalist and constructivist actors. The use of realist actors, as evidenced by the use of the words tribunal, court, secretary, parties, councils, and is followed by other actors related to the state. The use of realist actors has a percentage yield of 50%, while liberal actors and constructivist actors have 16% and 34% of yields respectively. The activities of state institutions as realist actors are more emphasized on maritime issues to gain sound relationship between countries and governments. Based on the comparison of the measurement results of three indicators (authority, governance, and actors) using three approaches (realism, liberalism, and constructivism), the realism approach has dominated the United Nations' policy direction in viewing marine issues through UNCLOS. The realism approach has been reflected in the use

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of words that are dominated by state actors and government institutions (governing, measuring, exploitation, operation, controlling, and other actions). Realistic governance is wrapped through a series of regulations and laws that are adapted to official procedures.

This paper is new compared to previous literature as the paradigm of UNCLOS was analyzed based on the international relations theories. Meanwhile, the paper titled The Concept of the Archipelagic Province and Archipelagic State in the Perspective of National and International Law compiled by Muhammad Risnain discussed about the perspective of UNCLOS towards archipelagic states.²⁵

C. Conclusion

The realism paradigm influenced the United Nations in establishing the UNCLOS in 1982. According to this research, every nation has the responsibility and influence in the enforcement and implementation of this regulation. We recommend that the United Nations use the paradigms in balance in establishing the UNCLOS. Liberalism can be employed to reduce the conflict and enhance the collaboration among states. Meanwhile, the constructivism takes into account the values of the states' structure, historical reasons and societies. Future researchers are encouraged to analyze the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea to gain comprehensive knowledge related to paradigms used by the United Nations in handling sea-related issues.

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